IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2370 OF 2005

IN

SUIT NO. 1560 OF 1995

Dinesh S. Advani @ Laxman S.
Advani @ L.S. Advani. .. Plaintiff.

vs.

Mrs. Jasbir Vallia .. Defendant.

Mr. S.K. Jain a/w Naina Desai
for plaintiff.
Mr. V. G. Mehta for defendant.
Mr. A.M. Saraogi for defendant no. 2.

CORAM : S.U.KAMDAR, J.

DATE : 26th August, 2005.

P.C.

. Motion made returnable forthwith by consent of the parties and called out for hearing and final disposal.

2. By consent of the parties, the following order is passed.

The ex-parte decree dated 13.12.2004 as

corrected by order dated 20.1.2005 is set aside. Suit is restored.

3. In the present case issues are already framed. In the interest of justice this is a fit case where the matter can be referred to under Order 26 rule (4) of the Civil Procedure Code for recording evidence before the Commissioner. Both the parties have no objection for the same.

4. Mr. Satish Shah Advocate is appointed as Commissioner to record evidence. The Commissioner is directed to commence the recording of evidence on or before 10.9.2005. The Commissioner is further directed to record the objections raised, if any by the parties, the same will be determined by the Court at the hearing of the suit. The Commissioner is further empowered that if any party does not cooperate by producing the witnesses on more than two adjournments, the Commissioner will go over to the next witness and conduct the evidence and file his report by 30.11.2005. On such report being filed the matter to be placed for hearing and final disposal in the week commencing 5.12.2005. Hearing of the suit expedited.

5. By consent of the parties, during the pendency and final hearing of the suit, the Court Receiver, High Court, Bombay is appointed as

Receiver. The receiver is directed that the defendant to be appointed as an agent of the Court Receiver without any security but on usual terms and conditions of royalty. The receiver is directed to finalise the agency agreement within a period of three weeks from today and fix the royalty also within the period of three weeks. If he is not able to fix permanent royalty, he is directed to fix ad-hoc royalty immediately. The defendant undertakes to hand over formal possession of the suit premises. The Court Receiver to take undertaking from the defendant not to alienate, encumber or induct any third party in the suit premises during the pendency and final disposal of the suit.

6. Motion disposed of accordingly. The defendant to pay costs of the present motion quantified at Rs. 10,000/- to the plaintiff.

. Parties to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.